

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. 20-RC-271637

ANIMAL LEGAL DEFENSE FUND

Employer,

and

NONPROFIT PROFESSIONAL EMPLOYEES UNION;
IFPTE LOCAL 70

Petitioner.

**ANIMAL LEGAL DEFENSE FUND'S EMERGENCY MOTION
TO STAY MAIL BALLOT ELECTION**

Prepared by:

OGLETREE, DEAKINS, NASH,
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Sara E. Olschewske
Matthew J. Kelley

Counsel for Animal Legal Defense Fund

Animal Legal Defense Fund (“ALDF” or the “Organization”), pursuant to Section 102.67 of the National Labor Relations Board’s Rules and Regulations,¹ files this Emergency Motion to Stay Mail Ballot Election. ALDF requests the National Labor Relations Board (the “Board” or the “NLRB”) to require Region 20 to stay the ballot count until: (1) instructions are sent to all eligible voters to destroy the voting packets already mailed and that any ballot received from the first batch of ballots is destroyed; (2) the Organization posts a new Notice of Election with new mailing details; (3) new, correct ballots are sent to the staff members on a date agreed by the Parties; (4) ensure the new ballots are printed on different color paper than the old ballots; (5) issuance of a different numbering system for the confidential identification of the ballots; (6) include instructions with the new ballots outlining the Region’s mistake and provide instructions to only fill out the new, colored ballot; (7) discard of any ballots received on the original paper, if any are received, and allow everyone in the voting unit to submit a new ballot, even if they voted on the old ballot(s) by accident; and (8) extend the voter period by the same period of time it takes for the Region to send out new ballots.

¹ This section of the Rules and Regulations related to the Regional Director’s “actions.” It is ALDF’s contention that the Regional Directors actions include (1) violating the terms of the stipulated agreement; and (2) refusing to reissue ballots to all voters due to the Region’s very own error.

The following extraordinary circumstances compel the NLRB to grant this Motion immediately to stay any further confusion with the mail ballots scheduled to be counted on March 26, 2021:

- The petitioned for unit of ALDF staff members includes both professional and non-professional individuals. As a result, the Region was to issue two different ballots under *Sonotone*, 90 NLRB 1236 (1950).
- On February 26, 2021, the Region sent ballots to all staff members within the petitioned-for unit. The Parties had previously agreed as to which staff members would fall within the professional and non-professional categories.
- On Tuesday, March 2, 2021, the Region informed the Parties' counsel that it made a mistake when issuing the ballots. Specifically, the Region sent two ballots to every staff member, regardless of their status as a professional or non-professional employee. Thus, each individual within the petitioned-for unit received the Voting Group A "professional" and Voting Group B "non-professional" ballots.
- Rather than issuing new ballots, the Region has simply sent an email to every staff member instructing them to fill out only one ballot, and intends on voiding every ballot that was incorrectly filled out due to the Region's mistake.²
- A substantial question of law or policy is raised because, as it stands, both the Union and Organization will have automatic grounds for appeal/objections to the election, and the matter can simply be resolved by issuing new ballots to all petitioned-for unit staff members.

I. STATEMENT OF THE CASE

On December 28, 2020, the Nonprofit Professional Employees Union, IFPTE Local 70 (the "Union") filed a representation petition, Case No. 20-RC-270735. On January 20, 2021, the Union withdrew its petition after missing its deadline to file a responsive Statement of Position. Thereafter, on January 21, 2021, the Union refiled its petition, Case No. 20-RC-271637. On February 10, 2021, the Parties stipulated to a mail ballot election. The stipulated agreement

² The Region's re-issued instructions are attached as Exhibit A.

included language and instructions related to professional employees and nonprofessional employees. The two voting groups for the election included:

Voting Group - Unit A (Professional Unit): All full-time and regular part-time Senior Pro Bono Managers, Pro Bono Research Analysts, Senior Policy Programs Managers, Education Programs Managers, Animal Legal Programs Fellows, Staff Attorneys, Litigation Fellows, CJP Fellows, Legislative Affairs Managers, Senior Legislative Affairs Managers (non-law clerk program), Senior Staff Attorneys CJP (non-supervisory) employed by the Employer.³

Voting Group Unit B (Non-Professional Unit): All full-time and regular part-time Database Analysts, Membership Services Associates, Processing Admin. Assistants, Operations Admin. Assistants, Events Associates, Project Managers, Philanthropy Managers, Development Associates, Grant Officers, Development Admin. Assistants, Social Media Specialists, Digital Media Specialists, Senior Graphics Designers, Communications Associates, Senior Writers, Public Relations Specialists, Paralegals, Litigation Program Admin. Assistants, and Case Managers employed by the Employer.

The stipulated election agreement stated that there would be two different ballots - one for Voting Group A and one for Voting Group B. The ballot for Voting Group A would include two questions, first, whether the professional employees wished to be in the same unit as non-professional employees, and second, whether they wished to be represented by the Union. Voting Group B's ballot was only to include the second question. Specifically, the stipulated agreement states:

Two questions shall appear on the ballot of the professional employees in Unit A:

(1) Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining? The choices on the ballot will be "Yes" or "No".

³ There is also a group under Unit A who are allowed to vote subject to challenge: Senior Student Programs Attorneys, Senior Staff Attorneys (Litigation Program), and Senior Legislative Affairs Managers (Law Clerk Program).

(2) Do you wish to be represented for purposes of collective bargaining by the Nonprofit Professional Employees Union, IFPTE Local 70? The choices on the ballot will be “Yes” or “No”.

The question on the ballot for the non-professional employees in Unit B will be:

Do you wish to be represented for purposes of collective-bargaining by Nonprofit Professional Employees Union, IFPTE Local 70? The choices on the ballot will be “Yes” or “No”.

On February 26, 2021, the Region sent ballots out to both voting groups. However, on March 2, 2021, the Region informed the Parties that it made a mistake. Specifically, the Region failed to provide the different voting groups with different ballots. Instead, the Region sent both ballots to *all* petitioned-for unit employees, without specific instructions on which one each voter should complete.

After discovering the mistake, the Organization learned that some staff members had already received the confusing packet, filled out both ballots and returned them to the Region. Thus, on Tuesday, March 2, 2021 at 6:02pm (PT), ALDF’s counsel informed the Region of this additional issue and requested that the Region cancel the pending election and immediately void the ballots sent out, and to restart the election at a mutually agreeable time, likely within the next five (5) to seven (7) days.

Rather than addressing the concerns raised by ALDF’s counsel, the Board Agent simply replied with “thank you for the update,” and stated that the Region planned to send out a “revised set of voter instructions for both voting groups.” The Board Agent further stated that if any voter already voted and sent their ballots, they could contact the Regional Offices if they “desire[d]” a duplicate ballot kit.” Further, the Agent stated that if the Region only received the first kit by the end of the voting period, the Region would take the ballot that is relevant to that voter’s voting group from the envelope and only count that ballot - the other ballot would be deemed void.

Immediately thereafter, ALDF's counsel informed the Region that it planned on filing this Emergency Stay. Nowhere in the instructions did the Region specify what would happen if a staff member accidentally filled out and returned the wrong ballot. The re-issued instructions simply ignore the real possibility of individuals mailing the wrong ballot back to the Region.

On Wednesday, March 3, 2021, the Board Agent for Region 20 held a conference with the Parties' counsel. During that call, the Board Agent stated that any staff member who fills out the wrong ballot and only sends the wrong ballot back will have their ballot voided. This was a concern for both the Union and the Organization, as staff members should not be penalized for the mistake of the Region. While the staff member could request a second ballot in the event they made such a mistake, that meant the staff member had to realize their mistake, request another ballot, fill out another ballot and return it all before March 26, 2021. In this election a significant portion of the unit is located outside of Region 20. Some staff members are based in Portland, Oregon some in Southern California, but some as far away as New York City and Vermont. Given the concerns with the U.S. Postal Service, the potential for disenfranchisement is high in this situation.

On March 4, 2021, counsel for ALDF asked the Union whether it was willing to join with this Motion to Stay. The Union objected to the Motion.

II. THE REGION'S DECISION TO NOT ISSUE NEW, CORRECTED BALLOTS IS AGAINST POLICY AND MUST BE STOPPED

The Region's refusal to reissue new, correct ballots to the voting units is against policy and the Board should stay the matter until the Region corrects its error. As an initial matter, the Region has violated its own, approved stipulated election agreement by failing to send one ballot to each employee. This undermines the very essence of a stipulated agreement, and will lead to further litigation down the road based on the errors of the Region.

Second, and while not exhaustive, the following scenarios could, and likely will, arise based on this error:

- What if a staff member believes he/she is part of the wrong unit (for example, believes he/she is part of the non-professional unit but is actually part of the professional unit) and fills out the correct ballot for the wrong unit?⁴ To this point, why must the ballot be void as a result?
- Should the Organization encourage everyone to simply fill out both ballots and have the Region deal with sorting which staff member belongs to the professional versus non-professional units?
- What if a significant number of people fill out the wrong ballot and those ballots are voided? The actions of the Region in this instance are *per se* objectionable because of the potential for confusion and disenfranchisement. The Region's approach is to add incomplete instructions and hold their breath, hoping that nothing goes wrong.
- What if voters, already confused by the process, decide not to vote at all?
- What if voters vote using the incorrect ballot but do not request or receive new ballots in time to fix the error caused wholly by the Region?
- What if a voter having previously submitted the correct ballot feels compelled to request a duplicate kit based on the Region's error and never returns the duplicate ballot, thus effectively voiding the previously appropriate case vote?

Moreover, the projected "void" ballot outcome described by the Region's Board Agent will create immense confusion and/or disenfranchisement given the ease of the remedy noted below.

All of these concerns can be addressed easily by the Region conducting the following action items:

1. The Regional Director can send out instructions to each staff member requesting that the current ballots be destroyed. If staff members have already sent their ballots, such ballots will be destroyed upon arrival.
2. Require ALDF to post a new Notice of Election setting out new mailing details.

⁴ While it may be clear to the Region and/or Board as to who is professional v. non-professional, most laypersons do not understand the distinction with the law, causing people to choose which they feel more associated with. Given the fact that this election involves a non-profit organization made up of approximately two dozen different job classifications, the possibility of confusion is high.

3. Mail new ballots, correctly, on the date agreed upon by the parties.
4. Ensure the new ballots are a different color than the old ballots, and use a different numbering system for the confidential identification of the ballot.
5. In the new ballot packet, include a letter from the Region outlining its error, and provide instructions to only fill out the new “x” colored ballot.
6. Extend the voter period by the same period of time it takes to send out the new ballots.

The action items listed above are not unduly burdensome to the Region, and the five (5) to seven (7) day voting-period extension due to the Region’s error is reasonable under the circumstances. Without such corrections, both the Organization and the Union have grounds to object to the election, which would cause even greater delay to staff exercising their Section 7 rights. Rather than deal with the consequences to the Region’s mistakes in objections, the Region can simply correct its mistake now and allow a lawful election to continue with a minimal impact on the overall timing of this election. Given the fact that the ballots are being mailed all across the United States and the potential for confusion is high, especially as individuals have already filled out ballots and returned them incorrectly, the Board should safeguard the election process and ensure maximum participation free of this kind of confusion.

III. CONCLUSION

Based on the facts above, ALDF respectfully requests the Board grant this motion, stay the election, require the Region to issue corrected ballots, and extend the voting period to reflect the time it took to correct the error.

Dated this the 5th day of March 2021.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.



By: _____

Sara E. Olschewske

Matthew J. Kelley

Attorney for Animal Legal Defense Fund

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

ANIMAL LEGAL DEFENSE FUND

and

**NONPROFIT PROFESSIONAL
EMPLOYEES UNION (NPEU), IFPTE
LOCAL 70**

Case No. 20-RC-271637

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Emergency Motion to Stay Mail Ballot Election** was served on following parties on the 5th day of **MARCH, 2021**:

Jill H. Coffman, Regional Director

NLRB - Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738
Via Electronic Filing

Samuel J. Hoffmann, Field Examiner

National Labor Relations Board
Region 20
Samuel.Hoffmann@nrlb.gov
Via Email

Elizabeth Sparks, Union Organizer

Nonprofit Professional Employees Union,
IFPTE Local 70
501 3rd St NW Ste. 70
Washington, DC 20001
esparks@ifpte.org
Via Email

Richard Bialczak, Counsel

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Via Email

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.



Sara E. Olschewske
Attorney for Animal Legal Defense Fund

EXHIBIT A



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156

March 2, 2021

Re: Animal Legal Defense Fund
Case 20-RC-271637

REVISED VOTER INSTRUCTIONS

VOTING GROUP A

It has come to my attention that the Region might have inadvertently sent to all voters two ballots: one for Voting Group A (professional employees) and one for Voting Group B (non-professional employees). If you received two ballots in your ballot kit, you should only cast the ballot designated for Voting Group A. The other ballot should be discarded. As a reminder, the ballot for Voting Group A contains two questions; one regarding inclusion with non-professionals, and the other regarding representation. The ballot for Voting Group B only contains the single question regarding representation, and should be discarded.

In the event any voter has already marked and mailed both ballots and desires a duplicate ballot kit, please contact the Regional Office. Should a return envelope arrive with both ballots inside, and if a duplicate kit has not been sent and returned, only the ballot designated for that voter's voting group will be counted. The other ballot will be deemed void.

For your convenience, enclosed are the original voter instructions and the Notice of Election setting forth the classifications of employees in Voting Group A and Voting Group B. You are receiving these Revised Voter Instructions for Voting Group A because your name is on the voter list as belonging to that group. Voters with any question or doubt about which ballot to cast should contact the Regional Office at any of the phone numbers listed on the Notice of Election, but preferably the primary number at 415-356-5130.

Very truly yours,

/s/ Daniel J. Owens

DANIEL J. OWENS
Assistant Regional Director

FORM NLRB-4175

(5-20)

United States of America
National Labor Relations Board

**Instructions to Eligible Employees Voting
By United States Mail**



INSTRUCTIONS

1. MARK YOUR BALLOT IN SECRET BY PLACING AN X IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at: 415-356-5130

TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICE

BY March 26, 2021



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156

March 2, 2021

Re: Animal Legal Defense Fund
Case 20-RC-271637

REVISED VOTER INSTRUCTIONS

VOTING GROUP B

It has come to my attention that the Region might have inadvertently sent to all voters two ballots: one for Voting Group A (professional employees) and one for Voting Group B (non-professional employees). If you received two ballots in your ballot kit, you should only cast the ballot designated for Voting Group B. The other ballot should be discarded. As a reminder, ballot for Voting Group B only contains the single question regarding representation. The ballot for Voting Group A contains two questions; one regarding inclusion with non-professionals, and the other regarding representation, and should be discarded.

In the event any voter has already marked and mailed both ballots and desires a duplicate ballot kit, please contact the Regional Office. Should a return envelope arrive with both ballots inside, and if a duplicate kit has not been sent and returned, only the ballot designated for that voter's voting group will be counted. The other ballot will be deemed void.

For your convenience, enclosed are the original voter instructions and the Notice of Election setting forth the classifications of employees in Voting Group A and Voting Group B. You are receiving these Revised Voter Instructions for Voting Group B because your name is on the voter list as belonging to that group. Voters with any question or doubt about which ballot to cast should contact the Regional Office at any of the phone numbers listed on the Notice of Election, but preferably the primary number at 415-356-5130.

Very truly yours,

/s/ Daniel J. Owens

DANIEL J. OWENS
Assistant Regional Director

FORM NLRB-4175

(5-20)

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BY March 26, 2021